BEFORE THE NATIONAL LABOR RELATIONS BOARD
UNITED STATES OF AMERICA
REGION 19

MARCOR REMEDIATION, INC.

Employer

and Case 19-RC-14519

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 400, AFL-CIO; LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1334, AFL-CIO; AND UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, PACIFIC NORTHWEST REGIONAL COUNCIL, LOCAL 28[1]

Joint Petitioners

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[2] in this proceeding, the undersigned makes the following findings and conclusions:[3]

I) SUMMARY

The Employer is a Maryland corporation that maintains an office and place of business in Libby, Montana, where it is engaged in the business of environmental contracting. The Joint Petitioners filed the instant petition and seek to represent a unit of all full-time and regular part-time hazardous material handlers, hazardous materials equipment operators, equipment operators, carpenters, laborers, truck drivers, and foremen employed by the Employer at the EPA Superfund Cleanup Site in Libby, Montana. The parties disagree whether the classification of carpenter should be included in the unit, and whether the petition should be dismissed because of the Employer's alleged imminent cessation of operations in Libby and because of

[1] The Joint Petitioners' name appears as corrected at the hearing.

[2] The Employer filed a timely brief, which was duly considered.

[3] The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organizations involved claim to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

the Joint Petitioners' actions that are allegedly inconsistent with their joint petitioner status. The Employer contends that inclusion of the carpenter classification in the unit is inappropriate because the Employer does not employ anyone with that title. The Employer further contends that I should dismiss the instant petition because the two contracts, which authorize the Employer to perform work at the site, are expiring and no further work exists, and because the conduct of the unions that filed the instant petition is inconsistent with that of joint representation. The Joint Petitioners contend that the unit sought should include carpenters as there are carpenters performing carpentry work for the Employer. The Joint Petitioners further contend that the record evidence establishes that the Employer will continue to have remediation work in Libby for several years, and that the three unions gave clear notice to the Employer that they were seeking to represent the employees as their joint bargaining representative.

Based on the record evidence and the arguments presented by the parties, I find that the petition should not be dismissed because the Employer's cessation of operations at Libby is not certain and imminent, and because the Joint Petitioners intend to represent the employees jointly in whichever unit is found appropriate. I further find that the Employer does not employ anyone with the carpenter classification and that the term carpenters should be deleted from the unit's description. Accordingly, I shall direct an election in the unit sought by the Joint Petitioners, but excluding the classification of carpenter.

Below, I have provided a section setting forth the evidence, as revealed by the record in this matter, relating to the Employer's operations, the status of the Joint Petitioners as a joint bargaining representative, the alleged imminent cessation of the Employer's operations, and the alleged employment of carpenters by the Employer. Following the presentation of the evidence, I have set forth a brief summary of the parties' positions and a section analyzing the evidence based on the applicable legal standards. The decision concludes with a direction of election and the procedures for requesting a review of this decision.

II) EVIDENCE

A) The Employer's Operations at Libby, Montana

The Employer is a Maryland corporation that operates 12 offices throughout the United States. As an environmental contractor, the Employer is engaged in the business of the removal and abatement of hazardous materials such as asbestos, lead paint, PCBs, and mercury. Since as early as the summer of 2000, the Employer has engaged in the cleanup and removal of contaminated materials in and around Libby, Montana. Libby is a town situated in northwestern Montana that was the site of a large vermiculite mine, which closed in 1990 after approximately 60 years of operations. After it was determined that the mining and processing of the vermiculite resulted in the release of a toxic form of asbestos fibers, the U.S. Environmental Protection Agency (EPA) took responsibility for the cleanup of the area pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, which is commonly known as Superfund. The Volpe Center of the U.S. Department of Transportation (DOT) provides engineering and remediation support to EPA for the removal and disposal of the asbestos-contaminated material. In order to provide that support, the Volpe Center of the DOT has contracted with various entities, including the Employer, to clean up and remove the contaminated material. The last contract that the Employer had with the Volpe Center to provide such work expired in December 2002, and was not renewed.

The current cleanup and removal work that the Employer provides at Libby is pursuant to two contracts with an entity known as Soil and Land Use Technology, Inc. ("SALUT").[4] The Employer is SALUT'S only subcontractor that performs cleanup work at Libby. SALUT's employees also perform cleanup and other remediation work in Libby. The type of work that the Employer performs includes removal of contaminated insulation, dust, and soil from residences and a portion on or near the "Flyways" (the area where vermiculite ore was processed),[5] and transportation of the contaminated material to the old mine site and to a landfill. In performing these tasks, the employees use mechanized equipment such as vacuum trucks, hydraulic excavators, skid steer loaders, tractors, and compaction equipment, as well as standard hand tools such as shovels, hammers, screwdrivers, and pliers.

The size of the Employer's workforce at Libby fluctuates with the season. The peak season for performing work occurs between June and October. In the summer of 2001, the Employer's work force reached a peak of 60 employees. On the other hand, the amount of work decreases drastically during the winter season. Except for this past winter when the Employer performed interior work inside the residences, the Employer's operations historically have shut down completely. Even when the Employer performed work this past winter, however, the number of employees decreased to approximately 8 to 10. Fergus Donaldson, the Employer's project manager at Libby, testified that there were two weeks this past January when the Employer did not perform any work at Libby. To some extent, the size of the Employer's workforce also fluctuates with the amount of work that SALUT delegates to the Employer in the form of task orders. As of the date of the hearing, Donaldson estimated that the Employer employed approximately 18 employees performing work at Libby.[6]

B) <u>The Unions' Joint Petitioner Status</u>

On May 19, 2004[7] Lee Clarke, an organizer for International Union of Operating Engineers, Local 400, AFL-CIO ("Local 400"), went with a witness to the Employer's office in Libby. Clarke initially spoke to Jim Ranlett, the Employer's Site Superintendent in Libby, and identified himself as a representative for Local 400. Clarke showed Ranlett a document entitled Memorandum of Agreement, which was an unsigned and undated agreement between the Employer and the three Joint Petitioners in which the Employer agrees to recognize the Joint Petitioners as the Section 9(a) bargaining representative of the Employer's employees. This proposed single Memorandum of Agreement contains, inter alia, the following:

- The caption lists all three labor organizations and describes them as "Acting Jointly";
- The document further lists the parties to the Agreement as the Employer and the three named labor organizations "acting jointly," hereinafter referred to as the "Union".
- A single signature line for the three labor organizations.

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[4] SALUT is the general contractor, which has a contract with the Volpe Center. There are other contractors with EPA who are performing cleanup work in Libby.

[5] The record testimony establishes that the remediation work performed by the Employer on or near the Flyways is that portion not owned by W.R. Grace Company.

[6] The evidence is somewhat confusing on this point. Donaldson estimated that there are 18 employees, but also testified that the Employer employs 12 or 13 hazardous material handlers, 2 or 3 hazardous materials equipment operators, 12 or 13 laborers, and an unspecified number of truck drivers and working foremen. Donaldson explained that the discrepancy in numbers may result from different classification labels being attached to employees based on the work that they are performing at any given time.

[7] All dates hereafter occurred in 2004 unless otherwise noted.

After Ranlett reviewed the document, Clarke asked Ranlett whether the Employer was willing to grant voluntary recognition. Ranlett responded that he did not have the authority to do that. They then placed a conference call to Fergus Donaldson and Clarke again identified himself as a representative of Local 400. When Clarke asked that the Employer grant voluntary recognition, Donaldson replied that he did not believe that he was authorized to grant that request and added that he did not know what voluntary recognition was. Donaldson further told Clarke that Tim Miller was Donaldson's boss and gave Miller's telephone number and other contact information to date. Clarke placed several telephone calls to Miller and spoke to Miller's secretary, but Miller never returned Clarke's calls.

On May 24, the Joint Petitioners filed the instant petition. The unit sought by the Joint Petitioners in the original petition was all full-time and regular part-time production and maintenance equipment operators, laborers, carpenters, and truck drivers employed by the Employer at the EPA Superfund Cleanup site. At the hearing the Joint Petitioners stated that the correct description of the unit they are seeking is all full-time and regular part-time hazardous material handlers, hazardous materials equipment operators, equipment operators, carpenters, laborers, truck drivers, and foremen employed by the Employer at the EPA Superfund Cleanup Site in Libby, Montana, but excluding all managerial employees, office clerical employees, guards, and supervisors as defined in the Act. The Employer stated at the hearing that the unit was acceptable except for the inclusion of carpenters.

At some point between May 19 and June 3[8], the Employer's attorney contacted Clarke and stated that the Employer was considering the Joint Petitioners' request for voluntary recognition. The attorney asked for contracts, information, and wage rates that the Joint Petitioners would be seeking from the Employer. Further, according to the Employer's testimony, during these conversations, Clarke failed to identify himself as other than a representative of the Operating Engineers and failed to specify that he was seeking recognition as a joint representative. On June 3, Mike Jonas, a representative of Local 400, e-mailed the Employer's attorney four unsigned and undated contracts.[9] The e-mail message, which Jonas sent to the Employer's attorney with the contracts, stated as follows:

> "Lee Clark asked that I send these labor agreements to you for the Carpenters, Laborers, and Operators. The language could be combined in the three agreements to make a joint agreement. They should give you an idea of the boiler plate language we use. He also asked that I send along a memorandum for voluntary recognition. Thank you, Mike Jonas"

[8] Clarke and the Employer's attorney gave conflicting testimony whether the telephone communications between the two occurred before or after the Joint Petitioners filed the instant petition on May 24.

[9] The first contract is an addendum between Local 400 and an unnamed employer; the second is a May 1, 2004 through April 30, 2006 labor agreement between Missoula Construction Council, Inc. and the Pacific Northwest Regional Council of Carpenters, UBCJA and All Local Unions Affiliated with the Pacific Northwest Regional Council of Carpenters in the State of Montana; the third is May 1, 2004 through April 30, 2006 labor agreement between an unnamed employer and the Montana District Council of Laborers; and the fourth is a May 1, 2004 through April 30, 2006 Laborers addendum between an unnamed employer and Laborers International Union of North America, District Council of Laborers, State of Montana.

Although Jonas and Clarke spoke to the Employer's attorney and representatives the next day by telephone, they did not reach agreement and the Employer never granted voluntary recognition.

C) The Employer's Current Work and Alleged Imminent Cessation of Operations

The two subcontracts with SALUT under which the Employer is currently performing cleanup and removal work were signed in August 2002 and April 2003, respectively. Both subcontracts are indefinite delivery/indefinite quantity ("IDIQ") contracts. Donaldson explained that IDIQ contracts are like a blanket purchasing agreement with a fixed maximum value and a fixed time for performance of the work. He further explained that there is no guarantee that the total value of the contract will be awarded by the time that the performance date expires. The Employer also indicated that it would begin to demobilize if it did not soon receive additional work. The Employer performs work that SALUT assigns to it in the form of task orders.

The August 2002 contract has a maximum value of $2.9 million and has a two-year period of performance that is scheduled to expire on August 23.[10] The work performed under that contract is the cleanup and removal of contaminated material from the Flyways and adjacent area. Donaldson estimated that $1.9 million in funding remained on that contract as of the hearing date. He testified, however, that he does not expect the Employer to receive much of that funding because W.R. Grace, the company that used to own the vermiculite mine, is the party responsible for cleaning up the Flyways area. Donaldson stated that SALUT has requested an award of approximately $200,000 for work under that contract, and that the Employer can expect about $120,000 of that work when it is awarded.

The April 2003 contract has a maximum value of approximately $4.9 million. That contract has a total maximum value of approximately $4.9 million and Donaldson estimated that approximately $600,000 to $700,000 in funding remained on that contract as of the hearing date. The Employer's work performed under that contract has involved the cleanup of residences in Libby and the disposal of contaminated materials in the mine or landfill. At the time of the hearing the Employer was performing work under 4 task orders pursuant to that contract. The period of performance for three of the task orders expires on June 30 and the expiration date for the remaining task order is September. Based on conversations between Ranlett and Department of Transportation personnel, Donaldson is optimistic that the Employer will be awarded further task orders under this subcontract to perform cleanup and removal of materials from more residences during July.[11]

Donaldson testified that he does not know how many more years of cleanup and removal work exists at Libby for any contractor. He estimated that at the time of the hearing, approximately 1200 residential homes in Libby still required removal of contaminated materials. Donaldson further acknowledged that in December 2003, the Employer placed a bid with DOT for future cleanup and removal work in Libby. That bid was still pending as of the hearing date as DOT had not yet awarded the contract to anyone.

D) Carpenters' Work at Libby

The Employer did not employ anyone at Libby with the classification of carpenter as of the hearing date. Donaldson claimed that SALUT employs carpenters at the Libby site and pays them above the wage rate for carpenters. Donaldson also acknowledged that in

[10] Donaldson noted that DOT can award work only until that August 23 expiration date, though the contractors and subcontractors can perform the work beyond that expiration date if the work was awarded before the expiration date.

[11] Donaldson emphasized that those task orders would be awarded under the existing SALUT contracts that expire this year.

performing their remediation work, the Employer's employees are sometimes required to remove floorboards and thereafter replace and rebuild the floorboards once the contaminated material is removed.

III) POSITIONS OF THE PARTIES

The Employer contends that I should dismiss the instant petition because the unions have acted inconsistently with their claim that they will represent the employees jointly and because its operations are scheduled to end within a few months. The Employer further contends that as it does not employ any carpenters, the unit sought by the Joint Petitioners is inappropriate because it includes the classification of carpenter.

Contrary to the Employer, the Joint Petitioners assert that I should not dismiss the petition, but should direct an election, because the evidence establishes that there is significant work remaining at Libby and that the Employer will be performing that work, and that the Joint Petitioners clearly informed the Employer that they intended to represent the employees as their joint bargaining representative. Finally, the Joint Petitioners contend that the Employer employs carpenters and that they are performing carpentry work at Libby.

Both parties agree that should I decide to direct an election, I should apply the formula set forth in *Daniel Construction Co.*, 133 NLRB 264 (1961), as modified at 167 NLRB 1078 (1967), to determine the eligibility of employees to vote.

IV) ANALYSIS

It is settled that two or more labor unions may act jointly as the bargaining representative for a single group of employees. See, e.g., *Bridgeport Jai Alai*, 227 NLRB 1519 (1977); *Hotel Admiral Semmes*, 127 NLRB 988, 989 (1960). Where the unions have indicated a willingness to jointly represent the employees in the unit found appropriate, an employer must recognize and bargain with the unions as the joint representative if the employees select the unions as their bargaining representative. *Graneto-Datsun*, 203 NLRB 550 (1973). Where the evidence indicates that the unions do not intend to represent the employees on a joint basis if selected, however, the Board will not process the petition or place the unions on the election ballot as a joint petitioner. See, e.g., *Suburban Newspaper Publications*, 230 NLRB 1215 (1977) (where evidence established that the unions did not intend to bargain with the employer as the employees' joint bargaining representative despite their petition indicating otherwise, Board vacates the election results and dismisses the petition); *Stevens Trucking, Inc.*, 226 NLRB 638 (1976) (where unions never manifested any intention to represent the employees on a joint basis, the Board sets aside the election because the unions were placed on the ballot as the joint representative of one overall unit and directs an election in two separate units).

Contrary to the Employer's contention, I find abundant affirmative evidence in the record to demonstrate that if elected, the Joint Petitioners intend to act the employees' joint bargaining representatives in the unit found appropriate. I rely in particular on the instant petition, the proposed Memorandum of Agreement, and the June 3 e-mail sent to the Employer's attorney as persuasive evidence. First, the filing of the instant joint petition is a prima facie showing of the Joint Petitioners' intent to represent the Employer's employees as their joint bargaining representative. *Automatic Service & Heating Co.*, 194 NLRB 1065 (1972). Second, the proposed Memorandum of Agreement that Clarke sought to have the Employer's officials sign is an agreement between the Employer and *all three* Joint Petitioners, which are jointly identified as the "Union". Although the Employer asserts that in its brief Clarke failed to forward a copy of that agreement to the Employer, Clarke's unrebutted testimony establishes that he showed Jim Ranlett, the Employer's site superintendent, the Memorandum of Agreement when he requested

voluntary recognition from the Employer and that Ranlett read it. Third, the June 3 e-mail message from Jonas to the Employer's attorney specifically states that the three labor agreements that he was sending could be combined to make a "joint agreement."

I also reject the Employer's contention that the record evidence overwhelmingly reveals an intent on the Joint Petitioners' part to bargain on a separate basis. I am not persuaded that the failure of Clarke or Jonas to identify themselves as representatives of all three Joint Petitioners in their conversations and dealings with the Employer's officials and attorney is indicative of an intent to bargain separately. I find it noteworthy that the Employer cannot point to any statement of Clarke, Jonas, or any union official, that the Joint Petitioners will not bargain jointly or act as a joint representative. Moreover, there was no need for Clarke or Jonas to indicate that they were acting on behalf of all three Joint Petitioners in light of the above documentary evidence.

I also disagree with the Employer's assertion that the separate "execution ready" contracts that the Joint Petitioners sent to the Employer at the Employer's request reveal an intent to bargain and obtain separate agreements. The Employer's argument conveniently ignores the accompanying e-mail message that the language in the three agreements could be combined for a "joint agreement" and that the contracts provide the Employer with the type of boilerplate language used by the Unions. It is also clear that the Joint Petitioners were sending the agreements as examples of the types of contracts that all three Joint Petitioners seek to negotiate, rather than separate agreements that the Employer was being asked to sign, because one of the agreements listed the name of another employer. Thus, I reject the claim that the agreements were ready for the Employer's execution.

The Employer's reliance on *Automatic Service & Heating Co.*, 194 NLRB 1065 (1972), to support its argument is misplaced. In that case, the Board found that the prima facie showing of joint representation was rebutted by the admissions of the unions' officials at the hearing that they had no intention to engage in joint bargaining or to represent all of the bargaining unit employees. By contrast, the record evidence does not reveal any such statements or affirmative intention on the part of the Joint Petitioners not to act as joint representatives.

Accordingly, based on a consideration of the above circumstances, and in the absence of evidence showing that the Joint Petitioners do not intend to act as the employees' joint representative, dismissal of the petition is not warranted. *Bridgeport Jai Alai*, 227 NLRB 1519 (1977); *Hotel Admiral Semmes*, 127 NLRB 988, 989 (1960).

I further find that the Employer has failed to demonstrate that the petition should be dismissed because its operations at Libby are ending imminently. Under long-standing Board precedent, the Board will not order an election where the cessation of an employer's operations and permanent layoff of its employees are certain and imminent. See, e.g. *Hughes Aircraft Co.*, 308 NLRB 82 (1992); *M.B. Kahn Construction Co., Inc.*, 210 NLRB 1050 (1974). On the other hand, the Board will not dismiss a petition or decline to hold an election based on mere speculation concerning the uncertainty of an employer's future operations. *Hazard Express, Inc.,* 324 NLRB 989, 990 (1997). Accord *Canterbury of Puerto Rico, Inc.*, 225 NLRB 309 (1976).

Applying the above principles to the evidence, I conclude that an election should be directed. The Employer has not presented sufficient evidence to establish that its alleged cessation of operations at Libby is certain and imminent. Although the Employer is correct that it current work is pursuant to subcontracts whose funding or period of performance limits will be reached in the next few months, that is only part of the evidence that I must consider. Rather, I note further that the Employer has a substantial history of performing asbestos cleanup and removal work at the Libby site. It is also clear that substantial work remains to be performed at

the site. For instance, Donaldson acknowledged that approximately 1200 residential homes in Libby still require the removal of contaminated material. He also acknowledged that last December the Employer placed a bid with the Department of Labor on a contract to perform the same type of work it is currently performing. In these circumstances, where the Employer has performed past and current work, and is bidding on future work of the type performed within the unit sought by the Joint Petitioners, the Board has concluded that an immediate election is warranted. *Fish Engineering & Construction*, 308 NLRB 836 (1992) (where employer had performed past and current work, and was bidding on future work within the unit, Board directs an election even though that employer's current projects were scheduled to expire within 2 months and it was not certain that the employer would be awarded the future work).

The Board's decision in *Davey McKee Corp.,* 308 NLRB 839 (1992), which the Employer has cited in support of its contention, is inapposite here. The petition in *Davey McKee* was dismissed because the evidence established that not only was all of the employer's work going to be completed within a month of the hearing, the employer had not bid on any unit work that could be awarded to it. Thus, there was no possibility of future work for employees to perform in the record before the Board. By contrast, the Employer here has placed a pending bid with DOT on a contract for unit work that its employees could perform.[12] In addition, the record reflects that a substantial amount of work of the type which the Employer has been performing remains to be done. Accordingly, as it is not certain that the Employer's operations at Libby will cease in the near future, I shall direct an election in an appropriate unit.

Finally, I conclude that the appropriate unit should not include the classification of carpenter. Project manager Donaldson's testimony that the Employer does not employ anyone with the classification of carpenter at the Libby site was unrefuted. I do note that Donaldson further acknowledged that the Employer's employees perform some carpentry-type work such as the removal and rebuilding of floorboards. Accordingly, the appropriate unit does include those employees of the Employer who perform carpentry work even though they do not have the title of carpenter.

V) CONCLUSION

Based on the foregoing analysis and the record as a whole, I have found that the petition should not be dismissed because the Joint Petitioners intend to act as the employees' joint bargaining representative if elected, and because the Employer's alleged cessation of operations is not certain and imminent. I have further found that the appropriate unit should not include the classification of carpenter because the record demonstrates that the Employer does not employ anyone with that classification. Accordingly, I shall direct an election in the following appropriate Unit described as follows:

> All full-time and regular part-time hazardous material handlers, hazardous materials equipment operators, equipment operators, laborers, truck drivers, and foremen employed by the Employer at the EPA Superfund Cleanup Site in Libby, Montana, but excluding all managerial employees, office clerical employees, guards and supervisors as defined in the Act.

VI) DIRECTION OF ELECTION

[12] For the same reason, I find the Employer's reliance on *Clark Construction Co.*, 129 NLRB 1348 (1961), to be misplaced. Contrary to the Employer's claim, the evidence did not establish that the employer there had any current bids for unit work at the time of the hearing. Rather, the employer only intended to bid on unit work at some future date and the record reflected, unlike here, that all of its employees would be laid off before any future work would commence.

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed in the Unit during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off, and those in the Unit who have been employed for 30 working days or more within the 12 months preceding the eligibility date of the election, or had some employment during those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date, excluding those who have quit voluntarily or have been terminated for cause prior to the completion of the last job for which they were employed. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Union of Operating Engineers, Local 400, AFL-CIO; Laborers' International Union of North America, Local 1334, AFL-CIO; and United Brotherhood of Carpenters & Joiners of America, Pacific Northwest Regional Council, Local 28.

A) List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co*., 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before July 2, 2004. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of four copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

B) Notice Posting Obligations

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the

date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

C) Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by July 9, 2004.

DATED at Seattle, Washington, this 25th day of June 2004.

/s/ Richard L. Ahearn
Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
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Seattle, Washington 98174